

## REMARKS

### A. **GENERALLY**

Claims 9-39 are currently pending in the application. Claims 1-8 were previously canceled. Claims 9, 25 and 27 have been amended. No new matter has been added.

Applicant filed an amendment after final office action on February 22, 2007. The amendment was not entered because it was determined that the amendments raised new issues requiring further consideration and/or search and that Applicant's arguments relied on features that had not been entered.

Applicant hereby resubmits the amended claims along with a request for continued examination.

### B. **RELATED PROCEEDINGS**

This Office Action is directed to Application No. 10/654,668, which application claims priority from U.S. Patent 6,804,656 issued on October 12, 2004 (the "'656 Patent"). The prosecution of the '656 Patent involved multiple reviews and a substantial list of references. The '656 Patent issued with claims 1-26.

In a Notice of Allowance mailed June 2, 2004, the examiner cited the following reasons for allowance of claims 30-55 (renumbered in the '656 Patent as claims 1-26):

The present invention comprises independent claims 30 and 46. These claims include the following features that distinguish Applicants' invention over the prior art: utilizing a remote command center in conjunction with a workstation, to monitor and if necessary intervene in the expert critical care of critically ill patients in a plurality of geographically dispersed intensive care units twenty-four hours a day seven days a week by multiple parameters in monitoring and intervention, i.e., [through] a rules engine that use[s] more than one piece of data important to patient care stored in a database. The structure pertaining to the rules engine is set forth for example in Fig. 19 and the Specification where the rules engine (642) searches for patterns [of] data indicative of clinical deterioration on page 39-40. The examiner notes for the record that is has been argued that an intensive care unit can comprise one room on a floor. (Notice of Allowability, page 2.)

A request for reexamination of the '656 Patent was granted on April 7, 2005. Applicant filed amended claims resulting in the issuance of a Reexamination Certificate on September 26, 2006 granting amended claims 1-26.

A second request for ex parte reexamination of the '656 Patent was filed on November

20, 2006, subsequent to the conclusion of the first, earlier ex parte reexamination proceeding (Control No. 90/007,377) of the same patent. A second reexamination order was issued on January 12, 2007. The order cited Schoenberg et al. (WO 98/29790) (herein, "Schoenberg 790"), David et al. (U.S.P. 5,544,649) (herein, "David"), and Kohane, et al. ("Hypothesis-Driven Data Abstraction and Trend Templates," Proceedings of Seventeenth Annual AMIA Annual Symposium on Computer Applications in Medical Care, October 30-November 3, 1993) (herein, "Kohane") as supporting a determination that substantial new questions of patentability had been raised. The order further asserted that Schoenberg '502 was not prior art as to the '656 Patent. On January 19, 2007, Applicant filed a waiver of its right under 37 C.F.R. §1.530(b) to file a statement on the new questions of patentability cited in the order. An office action was mailed on February 6, 2007. Applicant filed responses to the office action issued in the Second Reexamination Proceeding on February 15, 2007 and on February 16, 2007.

On April 27, 2007, a non-final office action in the Second Reexamination Proceeding was mailed to Applicant indicating that the Second Reexamination Proceeding would be terminated and a Notice of Intent to Issue Ex Parte Reexamination Certificate (NIRC) issued subject to correction of certain formal matters relating to the claims filed in the Second Reexamination Proceeding. The Office Action of April 27 provided the following reasons for allowance:

"Independent claims 1 and 17 have been amended to overcome the prior art rejections set forth in this reexamination proceeding. Specifically, these claims have been amended to recite that monitoring and intervention for patients in the plurality of geographically dispersed ICUs "occurs in an automated fashion" at the remote command center 24 hours per day, 7 days per week. This limitation is not taught by the cited prior art patents and printed publications. Claims 2-16 are patentable because of their dependency from claim 1. Claims 18-26 are patentable because of their dependency from claim 17. Note the objections to claims 11 and 17-26 in item 1 above, which must be addressed in order for these claims to be indicated as patentable on the Notice of Intent to Issue *Ex Parte* Reexamination Certificate (NIRC)." (Office Action of April 27, 2007 at p. 3; paragraph numbers removed).

The following additional applications claim priority to the '656 Patent and are currently pending:

10/946,548 filed on 09-21-2004  
11/061,715 filed on 02-18-2005

11/072,359 filed on 03-04-2005  
11/096,189 filed on 03-31-2005  
11/118,950 filed on 04-29-2005  
11/200,554 filed on 08-10-2005  
11/235,512 filed on 09-26-2005  
11/236,103 filed on 09-26-2005  
11/268,706 filed on 11-07-2005  
11/268,748 filed on 11-07-2005  
11/444,080 filed on 05-31-2006  
11/444,081 filed on 05-31-2006  
11/444,082 filed on 05-31-2006  
11/444,396 filed on 05-31-2006

An office action directed to the claims of the 10/946,548 application included provisional double patenting rejections citing the 11/072,359, the 11/235,512 application, and the 11/236,103 application. In order to facilitate allowance of the present application, Applicant has filed herewith terminal disclaimers with respect to the 10/946,548 application, the 11/072,359, the 11/235,512 application, and the 11/236,103 application and a terminal disclaimer with respect to U.S. Patent 6,804,656.

**C. CLAIM REJECTIONS – 35 USC §103**

Claims 9-39 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,772,585 issued to Lavin et al. (hereinafter, “Lavin”) in view of U.S. Patent 4,852,570 to Levine (hereinafter, “Levine”). Both Lavin and Levine were considered in the Second Reexamination Proceeding.

Claim 9 (as amended) recites the following limitations:

9. (Currently Amended) A method for utilizing physician notes in a healthcare system comprising:

inputting patient health data reflecting a current state of a patient and treatment objectives for the patient to an input device, wherein the patient health data is inputted via formatted input options presented by the input device and wherein the input device is connected to a network; receiving the patient health data in the healthcare system via the network;

monitoring patient data elements of the patient;

communicating the monitored patient data elements to a remote command center via the network, wherein the remote command center comprises a database;

storing the monitored patient data elements in the database, wherein the database

- comprises stored patient data elements;
- creating a rule for the patient using the patient health data and the patient data elements;
- applying the rule continuously to selected patient data elements stored in the database to search for patterns of data and to produce an output indicative of a change in a medical condition of the patient; and
- utilizing the output to determine if intervention is warranted, wherein the monitoring and determining if intervention is warranted for the patient occurs in an automated fashion at the remote command center 24 hours per day 7 days per week.

Applicant respectfully submits that the combination of Lavin and Levine does not teach all of the limitations of claim 9 (as amended). At a minimum, the combination fails to teach the limitations, "applying the rule continuously to selected patient data elements stored in the database to search for patterns of data and to produce an output indicative of a change in a medical condition of the patient," and "utilizing the output to determine if intervention is warranted, wherein the monitoring and determining if intervention is warranted for the patient occurs in an automated fashion at the remote command center 24 hours per day 7 days per week."

Levine teaches a microcard reader and keyboard selection terminal that can be used to compare and detect a "trend" analysis from tests performed on a patient and recorded on a microcard. Additionally, the office action asserts that Levine teaches that individual readings and test results can be processed mathematically to produce an output that can be used by a physician to determine if intervention with a patient is warranted. From these characterizations of Levine, the office action determines that it would be obvious for one skilled in the art to include creating and applying rules to patient data to produce an output report to a physician as taught by Levine with the system and method for managing medical records taught by Lavin.

Lavin describes a system for recording medical data from a patient over a relatively long period of time and then analyzing the collected data to detect trends. The analysis performed at "regular long term intervals:"

At regular long term intervals, that may be annually, the individual consults with a physician for an examination. At this time the physician has available for read-out and comparison, the cumulative results of the periodically made groups of tests. By comparing like measurements taken of that individual over many spaced periods of time,

the doctor can more readily detect changes and "trends" that have progressively taken place over the long term. (Levine, Col. 2, lines 33-45.)

Applicant respectfully submits that the "trends" described by Levine do not equate to creating a rule for the and applying the rule continuously to selected patient data elements stored in the database to search for patterns of data and to produce an output indicative of a change in the medical condition of the patient and do not. Further, the limitation that both the monitoring the patient and determining whether intervention is warranted is accomplished in an automated fashion at the remote command center 24 hours per day 7 days per week is not taught by Levine's disclosure of performing trend analysis.

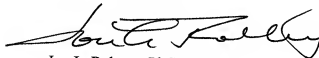
Independent claim 25 has been amended to recite similar limitations.

Based on the foregoing, Applicant submits that independent claims 9 and 25 (as amended) are not anticipated by Lavin and are therefore allowable over the cited prior art. Further, claims 10-24, which depend directly or indirectly from claim 9, and claims 26-39, which depend directly or indirectly from claim 25, are also patentable over the cited prior art.

#### **D. CONCLUSION**

Applicant respectfully submits that this amendment places the claims as currently listed in condition for allowance and requests reconsideration of the current rejection of the claims now pending in this application. Should any further questions arise concerning this application or in the event the above amendments do not place the application in condition for allowance, applicant respectfully requests a telephone interview. Attorney for the applicant may be reached at the number listed below.

Respectfully submitted,



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